IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 1403 OF 2002

IN

SUIT NO. 66 OF 1998

(TESTAMENTARY PETITION NO. 531 OF 1998)

Mr. Jayawant G. Rawool. .. Plaintiff/.
Petitioner.

vs.

Mr. Hemant G. Rawool. .. Defendant/
Respondent.

Mr. N. Trivedi for plaintiff.

Mr. P. Sawant with S. Jadhav i/by
Khaitan Jaykar for defendant.

CORAM : S.U. KAMDAR, J.

DATE : 18TH JULY, 2005.

P.C. :

. The present notice of motion has been taken out by the caveator respondent praying that the Court Receiver, High Court, Bombay should be appointed in respect of the premises known as Building No. 45, Tenement No. 2230, Gandhinagar Samadhan Co-Operative Housing Society Limited,

Gandhi Nagar, Bandra (East), Mumbai - 400 051 under provision of Order 40 Rule 1 of the Code of Civil Procedure 1908 and further that the petitioner be directed to deposit a sum of Rs. 7000/- per month by way of compensation for the use the use of the premises for commercial purpose.

2. Admittedly the premises belong to the deceased, namely, Mr. Gajanan Fattu Rawool. The petitioner herein has set up a will of the said Gajanan Fattu Rawool being the last will and testament dated 10.9.1991 and has filed a petition for probate.

3. The premises which are the subject matter of the present application are the premises belonging to the deceased and the petitioner is claiming to be in exclusive possession along with another legal heirs being the divorced daughter of the deceased, namely, Shobha Rawool. In so far as the other two legal heirs are concerned i.e. the the executor and another daughter of the deceased Mrs. Shital Shamsunder Rawool are not residing in the said premises.

4. In respect of this premises there has been proceedings filed in the City Civil Court being Suit No. 671 of 1997. The said suit was filed by the respondent claiming to be in joint possession of the

said property along with the petitioner herein. However, by an order and judgment dated 28.4.2005 the suit preferred by the caveators has been dismissed. In the present motion the relief sought is that the premises being the subject matter of the motion should be protected till and until the present petition for probate is finally decided between the parties. Admittedly the petitioner is carrying on business from the said premises of a pan bidi shop and the entire income generated therefrom is being utilised by the petitioner exclusively in exclusion of the other legal heirs of the deceased. It is also an admitted position that the petitioner has not paid any amount whatsoever towards the user of the premises. The business of the pan bidi shop is conducted from the front portion of the said premises and the balance portion of the premises is being used being used by the petitioner for residential use.

5. I put it to the petitioner that whether the petitioner is willing to deposit at least some amount in Court towards the use, occupation and possession of the said premises particularly for commercial purposes and a business. However, the learned counsel is not inclined to accept the said suggestion. According to the learned counsel the business is generated from the said premises is so meagre that it is not possible to part with any

money towards the deposit.

6. In the circumstances aforesaid, I am of the opinion that till the disposal of the present petition, the said premises are required to be protected. Since the petitioner is using the said premises for commercial purposes and generating income therefrom, it is necessary that the accounts in respect of the said business should be made available which can be considered at the time of the final hearing of the petition and in the event of failure of the petitioner in obtaining the said probate money earned from the user of the said premises will have to be distributed amongst the legal heirs of the said deceased on the basis of the intestate succession. In the light of the statement of the learned counsel for the petitioner that he is not in a position to deposit any amount, it is necessary that the Court Receiver, High Court, Bombay should be appointed as Receiver in respect of the said premises. However, the Receiver will not dispossess any party from the said premises who are found to be in possession thereof. The Receiver will appoint the petitioner as an agent in respect of the said business without charging any security. However, it will be on a payment of royalty. The said royalty amount will remain deposited with the Court Receiver who will abide by the final decision of the petition.

7. Till the Receiver takes possession, the petitioner shall not encumber, alienate or create any third party interest in respect of the said premises or part with possession thereof.

8. With the aforesaid directions, the present motion is disposed of. However, there shall be no order as to costs.